

REMARKS*Claim Rejections Under 35 U.S.C. § 112*

Claim 6 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 has been amended to overcome the rejection under 35 U.S.C. § 112, second paragraph. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, and allowance of claim 6.

*Claim Rejections Under 35 U.S.C. § 103*Claims 1, 2 and 5

Claims 1, 2 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sugizaki in view of Yu (U.S. Patent No. 6,495,437). Claim 5 is canceled without prejudice or disclaimer.

Claim 1 is amended to recite, in part, “wherein the oxidized Aluminum has a first concentration of excess Aluminum at a first oxide interface adjacent the substrate and a second concentration of excess Aluminum at a second oxide interface adjacent the control gate” and “wherein the first concentration of excess Aluminum is greater than the second concentration of excess Aluminum.” Applicant contends that the cited references, either alone or in combination, fail to teach or suggest at least these limitations as both are silent with respect to varying composition of their oxidized Aluminum. Applicant further contends this is a structural limitation requiring the oxidized Aluminum to contain a higher concentration of excess Aluminum nearer the substrate and a reduced concentration of excess Aluminum nearer the control gate.

In view of the foregoing amendment and remarks, Applicant respectfully submits that claim 1 is patentably distinct from the cited references, taken either alone or in combination. As claim 2 includes all patentable limitations of claim 1, this claim is also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claims 1 and 2.

Claim 4

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sugizaki and Yu in view of Akatsu (U.S. Patent No. 5,717,635). Applicant respectfully traverses.

Applicant contends that it has shown claim 1 to be patentably distinct from the references of Sugizaki and Yu. Applicant further contends that the tertiary reference of Akatsu fails to overcome the deficiencies of the primary and secondary references with respect to claim 1. Applicant thus respectfully submits that claim 1 is patentably distinct from Sugizaki and Yu in view of Akatsu, taken either alone or in combination. As claim 4 includes all patentable limitations of claim 1, this claim is also believed to be allowable. Applicant thus respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of claim 4.

New Claims

Applicant has entered new claims 49-55. Applicant contends that the new claims are consistent with the elected subject matter in its response to the Restriction Requirement of May 17, 2005 and are thus properly presented for examination in the present application. Applicant notes that new claims 49-51 depend from claim 1, such that claim 1 is necessarily generic to new claims 49-51. Applicant further notes that new claim 52-55 include all patentable limitations of claim 1, such that claim 1 is necessarily generic to new claims 52-55 as well.

Because claim 1 is generic to each of the newly presented claims, and because Applicant contends that it has shown claim 1 to be patentably distinct from the cited references, Applicant respectfully submits that new claims 49-55 are allowable for at least the same reasoning as applied to claim 1. Applicant thus respectfully requests entry and allowance of new claims 49-55.

CONCLUSION

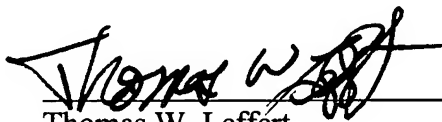
Claim 5 is canceled hereby. Claims 1, 2 and 6 are amended herein. Claims 49-55 are added hereby. Claims 1, 2, 4, 6 and 49-55 are currently pending.

In view of the above remarks, Applicant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 501373.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2204.

Respectfully submitted,

Date: 19 OCT 06



Thomas W. Leffert

Reg. No. 40,697

Attorneys for Applicant
Leffert Jay & Polglaze
P.O. Box 581009
Minneapolis, MN 55458-1009
T 612 312-2200
F 612 312-2250